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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 313.

DANIEL HAZARD, W. W. TAYLOR, JAMES M. TRUSLER, SAMUEL ERWIN, ET AL., PLAINTIFFS IN ERROR,

vs.

M. J. O'CONNOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 7, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 & 2 *Transcript.*

In the Supreme Court of the State of California.

M. J. O'CONNOR, Plaintiff and Respondent,
against
DANIEL HAZARD *et al.*, Defendants and Appellants. } No. 7965.

Transcript On Appeal.

Will D. Gould and James H. Blanchard, attorneys for defendants and appellants; J. D. Bicknell, attorney for Plaintiff and Respondent.

3 *Complaint in Ejectment.*

In the District Court of the Seventeenth Judicial District, State of California, in and for the County of Los Angeles.

M. J. O'CONNOR, Plaintiff,

vs.

DANIEL HAZARD, W. W. TAYLOR, JAMES M. TRUSLER, SAMUEL Erwin, William Boney, Fred. Holland, W. Burlingame, and J. F. Hawk, Defendants.

The plaintiff above named, complaining of defendants above named, for cause of action allege:

That on 10th day of April, A. D. 1876, the said plaintiff was the owner, and seized in fee, and possessed, and entitled to the possession of all that certain lot of land situate in the county of Los Angeles, State of California, and described as follows, to wit:

The southwest quarter of section 6, the east half of section
4 7, the west half of section 8, and the northeast quarter of section 17, and the north half of southwest quarter and southwest quarter of the southwest quarter of said section 17, all in township 3 S., range 13 W., S. B. M.

That while the plaintiff was such owner and so seized and possessed, and entitled to the possession of said land and premises, the said defendants did, on about the day and year aforesaid, wrongfully and unlawfully, and without right of title, enter into and upon the same and oust and eject the plaintiff therefrom, and, ever since that day, wrongfully and unlawfully have withheld, and still and now wrongfully and unlawfully do withhold, the possession thereof from the plaintiff, to his wrong, injury, and damage in the sum of one thousand dollars.

That the value of the rents and profits of the said land and premises is eight hundred dollars per annum, and that by reason of the unlawful withholding of the said land by the defendants as aforesaid plaintiff has been deprived, and by the continuance thereof will be deprived, of the use and occupation of the same, to his loss and damage in the sum of eight hundred dollars.

Wherefore the plaintiff prays judgment against the said defendant for the restitution of said land and premises, and for the sum of one

thousand dollars damages for the withholding thereof, and
5 eight hundred dollars damages caused by the loss of the value of the rents and profits thereof, together with his costs of suit.

JOHN D. BICKNELL,
Attorney for Plaintiff.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss:*

John D. Bicknell, being duly sworn, says: That he is the attorney of the plaintiff in the above-entitled action; that M. J. O'Connor, the plaintiff herein, is absent from Los Angeles county, where this affiant, his said attorney, resides; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes to be true.

JOHN D. BICKNELL.

Subscribed and sworn to before me, this 21st day of November, A. D. 1876.

H. O. BICKNELL,
Notary Public.

Filed November 25th, 1876.

A. W. POTTS, *Clerk.*

6 *Separate Answer of J. M. Trusler.*

In the District Court of the Seventeenth Judicial District of the State of California in and for the County of Los Angeles.

M. J. O'CONNOR, Plaintiff, *against* DANIEL HAZARD *et al.*, Defendants.

Now comes J. M. Trusler, one of the defendants in the above-entitled cause, leave of the court having been first obtained, and demanding for himself a separate trial, and as his own separate answer to the plaintiff's complaint therein, denies:

1. That on the tenth day of April, 1876, or at any other time before or since said date, the plaintiff was the owner or was seized in fee or possessed or entitled to the possession of the tract of land in said complaint described or any part thereof.

2. That he on said 10th day of April, or at any other time, wrongfully or unlawfully or without right or title entered into or upon said land and premises or any part thereof, or ousted or ejected the plaintiff therefrom, or that he has since said 10th day of
7 April or any date or at all wrongfully or unlawfully withheld or still or now wrongfully withholds possession of said land or any part thereof from the plaintiff, or that by reason of any act or acts of defendant the plaintiff hath suffered wrong or injury or damage in the sum of $5,000 or in any other sum whatever.

3. That the value of the rents and profits of said land and pemises is the sum of $3,000 per year, or that by reason of any act or acts of this defendant, or that by reason of unlawful withholding of said land, or any part thereof, the plaintiff has been deprived, or will be

deprived, of the use or occupation of the same, to his loss or damage in the sum of $3,000, or any other sum.

4. And the defendant denies each and every allegation in said complaint contained.

Further answering, the defendant alleges that he has not now, nor ever did have, any interest in or possession of any portion of the land and premises in plaintiff's complaint described other than the southwest quarter of section 8, township 3 S., range 13 W., of San Bernardino base and meridian, and as to such land his possession of the same is valid.

And said defendant, for a further and separate answer and defense to the plaintiff's complaint, alleges:

8 1. That said land and premises last hereinbefore particularly and in said complaint described, and the whole thereof, at the time said defendant entered and settled upon the particular tract or portion, and now possessed, occupied, claimed, and owned by him, as hereinafter mentioned and set forth, was unoccupied, uncultivated, unimproved, and vacant public domain of the United States, and that said land for more than ninety days prior to the date on which said defendant settled thereon, and prior to said 10th day of April, A. D. 1876, was duly surveyed by the United States authorities as public land, and the township plat including said land filed in the U. S. district land office at Los Angeles, California, in which district said land is situate, and said land was subject to the operations of the general laws of the United States pertaining to the disposition and possession and purchase of her public lands, and was, at and long prior to the time of the alleged entry and ouster complained of, subject to pre-emption settlement under the pre-emption laws of the United States, and that ever since the time of his said settlement he has held lawful possession, and now has the lawful right of possession of the said land by him possessed, as hereinafter set forth.

2. That heretofore, to wit, on or about the 7th day of April, 1876,

9 the defendant, under and by virtue of the pre-emption laws of the United States, and for the purpose and with the intention of availing himself of the provisions of said pre-emption laws, entered and settled upon the land claimed by him, the same being a part of the tract of land in plaintiff's complaint described, to wit, the southwest quarter of section 8, township 3 south, range 13 west, of San Bernardino base and meridian, and erected a dwelling-house and made other valuable improvements upon the said land by him so settled upon and claimed, as above set forth and described, and has ever since resided upon and cultivated the same, claiming and holding it as a pre-emptor, under the laws of the United States, and still and now so claims and holds the same.

3. That the defendant is and was, at the time he settled, as hereinbefore mentioned, a citizen of the United States, and the head of a family, over the age of twenty-one years, and has never had the benefit of the pre-emption laws in any of the States or Territories of the United States, and did not quit or abandon his residence on

his own land in said State to settle upon the public lands in said State, or said land described, and was not then, and is not now, the owner of 320 acres of land in any of the States or Territories of the United States; and said defendant was, at said date of his settlement, as aforesaid, a duly qualified pre-emption settler, and
10 that he did not settle upon said land for the purpose of acquiring title thereto for any person other than himself, and neither has, directly or indirectly, made any agreement or contract with any person or persons whatever, whereby the title which he might acquire from the United States would inure in whole or in part to the benefit of any person or persons other than himself, and his said settlement was not made for the purpose of speculation, but in good faith, and with the view to making said premises a home.

4. That said land is agricultural land, and not mineral land, and the same has not yet been proclaimed for sale.

5. That said defendant claims, as aforesaid, 160 acres of land only, and that said defendant thus claiming said land has fully complied with the pre-emption laws of the United States in every particular; that said defendant has, since his said entry upon said land, made known his claim, in writing, to the register of the proper land office, within the time prescribed by law, and has filed, or offered to file, in the U. S. district land office, in Los Angeles, California, in which district the lands are situated, his declaratory statement, in due form, and within the time prescribed by the United States pre-emption laws, for the said land claimed by
11 him, and has paid to the register and receiver of said office the fees required therefor, and thereafter said defendant, having fully complied with the said pre-emption laws, duly made proof before said register and receiver of his settlement, residence upon, and improvements of said land, and his qualifications as a pre-emptor, and all proof required to be made in such cases, and tendered to them the Government price for said land, and all fees in full, and has, in all respects, complied with the requirements of said pre-emption laws, so far as he has been permitted to do so by said land officers, and that his said application to enter said land and tender of proof, and payment, etc., is now pending before the Land Department of the United States.

And by virtue of the full compliance with all the requirements of the pre-emption laws of the United States by defendant as aforesaid, the defendant has acquired title to the said tract claimed by him and a vested interest therein from the Government of the United States, and is the owner of the same, and is entitled to a patent from the United States for the said tract of land so claimed and owned by him.

And for a further and separate answer and defense to the complaint of the plaintiff herein the defendant alleges:

1. That the lands and premises by the plaintiff described,
12 and herein particularly described, and the whole thereof, were at all times from the year 1837 until the 21st day of November, A. D. 1871, within the claimed and exterior limits of a valid Mexican grant, to wit, the Rancho Sausal Redondo, and were, at

all times between the dates last aforesaid, claimed by the grantees of said rancho and their assigns as a part of said grant, and were thus reserved from other appropriation, and were not subject to selection by the State of California, as indemnity school lands or otherwise, between said dates.

2. That plaintiff claims title to and right of possession and recovery of said land, and in no other way than by reason of a patent of the State of California, issued by the Governor of said State, in satisfaction and by reason of pretended insufficient and fraudulent applications illegally made for said land on or about the 6th day of March, A. D. 1868; that said applications were thus made and accepted by the State locating agent prior to the survey of said land, and while said Rancho Sausal Redondo was still unsurveyed; that all of said land was applied for as aforesaid, and the applications were made in the interest and for the benefit of one W. S. Rosecrans, through whom plaintiff claims title, and said applications to purchase were pretended to have been made to the State of Cali-
13 fornia, under the provisions of an act entitled "An act to provide for the sale of certain lands belonging to the State," approved April 27th, 1863, but were in fact collusive and fraudulent and in violation of said law and the limitations thereof, which then did forbid, and have ever forbidden, the location of more than 320 acres of land, either directly or indirectly, for any one person, and were a part of a large class of like applications thus fraudulently made.

3. That said applications, approved as aforesaid, were the basis of pretended indemnity school land selections and locations by the State locating agent for the lands claimed and now owned by defendant, which selections and locations were illegal and void, and conferred no title upon said Rosecrans, or upon the plaintiff, or any other person or persons whomsoever, by reason of the facts herein set forth.

4. That in satisfaction of said pretended illegal and fraudulent applications and selections and locations, the Commissioners of the General Land Office of the United States, claiming to be acting under the provisions of the act of Congress of March 3, 1853, and the sixth section of the act of Congress of July 23, 1866, amendatory thereof, erroneously, illegally, and without authority, as defendant believes, fraudulently listed and certified said land to the State
14 of California, which list was erroneously and illegally, as he believes, fraudulently approved by the Secretary of the Interior.

5. That said pretended locations and selections in the name of the State, or by the State of California, of said land in 1868, were illegal and void, and the act of Congress of March 3, 1853, or any amendment thereof, gave no force or effect to said locations or selections, and the approval of the list of said lands, as aforesaid, conveyed no right, title, claim, or interest therein to the State.

6. That the act of the Commissioners of the United States General Land Office in certifying or listing said land to the State of California was without authority, irregular, illegal, and ineffectual to

vest in said State any right, title, claim, or interest therein or thereto.

7. That the plaintiff never had possession of the land claimed by the defendant, as aforesaid, and in said complaint described, nor any part thereof, nor ever had any improvements thereon.

And for a further and separate answer and defense to the complaint of the plaintiff herein, the said defendant alleges:

1. That said applications, locations, and selections of the lands in dispute, as aforesaid, and the plaintiff's claim of title thereto, are illegal and void, inasmuch as said applications, locations, or
15 selections were made in lieu of certain 16th and 36th sections, which were, at the date of said applications and locations, and still are, unsurveyed lands of the United States, within townships, the plats of which have never been filed in the United States land office of the district in which said lands are situated, nor have the township lines thereof been extended over said lands, nor had the same been determined to be within the limits of any Spanish or Mexican grant by any final survey of such grant, determined and approved at the time of said applications and locations and said proceedings thereunder, nor were said 16th and 36th sections, or any part thereof, otherwise or in any way ascertained to be lost to the State of California; and that the U. S. surveyor general for the State of California never furnished the State locating agent, or any of the State authorities, with a list or lists of said 16th and 36th sections, or any part thereof, in any way, as a basis of selection or location, or at all, or in any way certified that the same were so covered or in any way lost to the State.

2. That the plaintiff's claim of title to said land, and said patents from the State of California, are null and void, and were obtained and made with full notice and knowledge of the fraudulent acts and all the acts and facts hereinbefore set forth.

16 And for a further and separate answer and defense to the plaintiff's complaint the said defendants alleges:

1. That the plaintiff has no right, title, or interest in said land, provided the title ever passed from the United States to the State of California.

2. That provided the State of California ever acquired title to said land, the title thereto is still vested in said State.

3. That said defendant, not waiving his pre-emption claim to said land, has duly applied to the State of California to purchase any and all claim, right, title, and interest of the State in and to said land, which application is now pending and undetermined; and that the defendant is a duly qualified purchaser of said land from the State.

Wherefore the said defendant prays for judgment against the said plaintiff, and for costs of suit.

WILL D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendant.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

J. M. Trusler, being first duly sworn, deposes and says: That he has heard read the foregoing answer, and knows the contents
17 thereof, and that the same is true of his own knowledge, except to things therein stated on his information and belief, and as to those matters he believes it to be true.

J. M. TRUSLER.

Subscribed and sworn to before me, this 29th day of December, 1879.

A. W. POTTS, *County Clerk,*
By A. NORTON.

Received copy of the foregoing answer this 31st day of December, 1879.

JOHN D. BICKNELL,
Attorney for Plaintiff.

Filed December 31, 1879. A. W. POTTS, *Clerk.*

Findings.

Title of Court and Cause.

In the above-entitled cause the court finds from the evidence the following facts upon the issues made by the pleadings as to the defendants, Daniel Hazard, William Boney, J. M. Trusler, and Samuel Irwin, sued as Samuel Erwin:

I.

That township 3 south, range 14 west, San Bernardino
18 meridian, was surveyed by authority of the United States in the month of February, 1868, and the township plat filed in the U. S. land office April 22, 1868, and said lands were thereafter listed to the State of California by lists in usual form, certified by the Commissioner of the General Land Office, under date of November 23, 1871, and by the Secretary of the Interior, under date of November 24, 1871, and said lists were thereupon filed and are now records of the U. S. land office.

II.

The State of California conveyed said lands by patent to W. S Rosecrans, under date of April 21, 1874, and the plaintiff in this action had, by mesne conveyances, acquired the title of said lands before the commencement of this action, and still holds the same.

III.

That plaintiff and its grantors had been in possession of said land from 1872 until the time of the entry of the defendant thereon, renting the same to various parties, who used said land for grazing purposes, and herding sheep thereon.

IV.

That the defendant entered upon said land at the dates
19 hereinafter mentioned, claiming the same as a pre-emptor, under the pre-emption laws of the United States, and erected a dwelling-house, and made other improvements thereon, and has resided thereon until the present time, and possesses all the necessary qualifications to entitle them to pre-empt lands under the laws of the United States.

V.

The defendants above named entered upon said land in the year of 1876, claiming said lands under the pre-emption laws of the United States.

VI.

That within the time prescribed by law after his entry upon said land, the defendant offered to file his declaratory statement in the United States land office; which offer was refused, and the defendant appealed to the Commissioner of the General Land Office from the order of the register of the land office refusing said filing, and said action has been, by the Commissioner, affirmed, and the same is now pending and undetermined before the Secretary of the Interior.

VII.

That subsequent thereto, and within the time prescribed by law each of the defendants tendered to the officers of the United States land office final proof, as required by law, and full payment
20 of the Government price of said land, together with all legal fees therefor, all of which was refused by said officers; and each of the defendants duly appealed to the Commissioner of the General Land Office from said refusal, and the same is now pending in the Land Department.

IX.

That each of the defendants entered upon the land and tendered his filing, proof and payment, or offer, by the following table:

Name.	Date of settlement.	Description.	Sec.	T.	R.	Date of filing declaratory statement.	Date of tendering proof and final payment
Daniel Hazard	Apr., 1876	N. W. ¼	8	3	13	April, 1878	
J. M. Trusler.	" 6, '76	S. W. ¼	8	3	13	April 7, 1878	Oct. 23, 1876
Samuel Irwin.	May, 1876	S. E. ¼	7	3	13	Homestead.	Claimant.
Wm. Boney...	" 1876	N. E. ¼	7	3	13	Homestead.	Claimant.

X.

That the value of the improvements placed on said land by defendant is equal in value to the rents and profits thereof while such defendant has withheld the same from the plaintiff.

XI.

That all the allegations in defendant's answer, except as hereinbefore found, are untrue.

XII.

That the plaintiff was, at the time of the filing of the complaint herein, and still is, the owner in fee of the land described in his complaint, and claimed by said defendant, and at all times since the filing of the complaint has been, and still is, entitled to the possession of said land as against each and all the defendants above named.

As a conclusion of law from the foregoing, the court orders that judgment be entered in favor of the plaintiff, and against each of defendants above named, for the possession of the land described in the answer of each defendant above named, and for costs; and it is ordered that judgment be entered against each defendant, and that the foregoing finding shall be held and deemed the findings as to each defendant.

Dated May 14, 1881.

J. D. HINES,
Superior Judge, Presiding.

Filed May 14th, 1881.

A. W. POTTS, *Clerk*,
By A. RIMPAU, *Deputy.*

Judgment by the Court.

Title of Court and Cause.

This cause came on regularly for trial on the 11th day of May, A. D. 1881, John D. Bicknell, Esq., appearing as counsel for the plaintiff, and Gould & Blanchard, Esqs., for the defendant. A trial by jury having been expressly waived by the respective parties, the cause was tried before the court sitting without a jury, whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by both parties. The evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon the court filed findings of fact, orders that judgment be entered herein in favor of the plaintiff and against the defendant, J. M. Trusler, for the possession of the land described in defendant's answer, and costs.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged, and decreed that M. J. O'Connor, the plaintiff, do have and recover of and from J. M. Trusler, the defendant, the possession of the southwest (S. W. $\frac{1}{4}$) quarter of section eight (8), township No. three (3) south, range No. thirteen (13) west, S. B. M., together with said plaintiff's costs and disbursements incurred in in this action, amounting to the sum of thirty-two and $\frac{50}{100}$ ($32.50) dollars.

J. D. HINES,
Superior Judge, Presiding.

Judgment recorded.

Filed May 14, 1881.

A. W. POTTS, *Clerk*,
By A. RIMPAU, *Deputy*.

Statement on Motion for New Trial as to Defendant, J. M. Trusler.

Title of Court and Cause.

Be it remembered that this cause came on regularly for
23 trial on the — day of May, 1881, before the court, a jury having been waived by the parties.

The court proceeded to hear and determine the issues made by the pleadings as to the defendant, J. M. Trusler, who claims S. W. ¼ sec. 8, T. 3 S., R. 13 W., S. B. M.

Whereupon the plaintiff, to sustain the issues on his part, called J. W. Haverstick as a witness, who, being sworn, testified in substance, as follows: That he was the receiver of the U. S. district land office for the Los Angeles land district, and as such had the custody of the records of said office, and that the township plat of township 3 S., R. 13 west, S. B. M., was one of the records of said office. Witness then testified, from the said plat and the marginal notes thereof, that the township lines thereof were run in 1853 by the authority of the United States, and that the section lines were run in the field in February, 1868; that said survey was approved by the U. S. surveyor general March 31, 1868, and said plat filed in the U. S. land office, then at San Francisco, April 22, 1868, and filed in the U. S. land office at Los Angeles, November 21, 1871.

Witness further testified that the tract-book which he had present in court was also one of the records of said office, and contained official entries concerning the land in question.

24 Counsel for the plaintiff then asked the witness the following questions:

Question. Read the entries you find in that tract-book pertaining to the land in question, to wit, S. W. ¼ sec. 8, T. 3 S., range 13 west, S. B. M.

Counsel for the defendant objected to the question on the ground that it is admissible, as it did not call for the best evidence; said entries being merely abstracts of official documents that should be in said U. S. land office, the loss of said documents not having been accounted for, and upon the further ground that it was irrelevant and immaterial.

The court overruled the objections, and defendant then and there duly excepted.

Witness then proceeded to read from said book the entries purported to show that said land was covered by a State indemnity school selection of date May 21, 1868, and that said selection was approved and the land listed to the State of California, November —, 1871.

Upon cross-examination witness testified that the said township plat was suspended January 10, 1872, and released from suspension June 15, 1872; and that the filing of said plat of township 3 S., 13

west in the U. S. land office at Los Angeles, California, November 21, 1871, appeared to be an original filing.

25 Plaintiff, to further sustain the issues upon his part, then introduced in evidence List No. 1 of the United States Land Office, said list being certified to by the Commissioner of the General Land Office under date of Nov. 23, 1871, and the Secretary of the Interior under date of Nov. 24, 1871, a copy of which list, so far as it pertains to the lands in question, is hereto attached, marked Exhibit No. 1, wherein the land in controversy was described and purported thereby to be certified to the State of California as indemnity school lands.

Plaintiff then introduced in evidence a patent from the State of California to W. S. Rosecrans, said patent being in the usual form of patents, and dated ———, 1874, whereby the State of California purported to convey the land in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed for the land in question from W. S. Rosecrans to M. J. O'Connor, the plaintiff herein, of date April 12, 1875.

J. D. Bicknell was sworn as a witness on behalf of plaintiff, and testified that he had been the attorney and agent for plaintiff since date of deed to plaintiff by W. S. Rosecrans, and the agent of said Rosecrans since the fall of 1872. That, as agent for Rosecrans and for plaintiff, rented the lands in controversy, with other lands,

26 to various parties, who have used the lands for grazing, herding sheep thereon continually since the fall of 1872 up to the time the defendant entereon thereon, in April, 1876; that the rent of said land for grazing purposes is reasonably worth 35 cents per acre per annum; that after the entry of the defendant on said land, and before the commencement of this action, the party to whom the land was rented surrendered his lease in writing and delivered the possessson of said land, as far as said lease is concerned, to the plaintiff herein.

E. Root was sworn as a witness, and testified that the rents of said land was reasonably worth 62½ cents per acre a year.

James Root was also sworn as a witness, and testified that the rents of said land was reasonably worth 62½ per acre per year.

Plaintiff rested his case.

The plaintiff stipulated that the defendant would testify that he had all the qualifications of a pre-emptor.

The defendant, J. M. Trusler, was sworn on his own behalf, and testified that he settled upon said land about April 10th, 1876, and applied to the register and receiver of the U. S. district land office to file his declaratory statement in due form upon said land, and was at that time living with his family on said land; that after-

27 wards, about April 10th, 1876, he tendered and offered to file said declaratory statement with said officers, and tendered the same and deposited said statement, with the necessary fees therefor.

That afterwards, about December, 1876, the defendant made his requisite proof in writing of compliance with the laws of the United States pertaining to pre-empting Government lands of the United States, and of his settlement and qualifications, and his cultivation

and improvements upon said land, and tendered the same to the officers of the land office aforesaid, and deposited the same with said officers with all the legal fees and commissions, and requested said officers that he might be permitted to enter said land; that the defendant at the same time, and in connection with said proofs tendered the full Government price for said land in gold coin; that the register and receiver refused to file said declaratory statement, or to receive the written proofs aforesaid and refused to receive the Government price for said land.

That the defendant appealed from the action of said officers to the Commissioner of the General Land Office at Washington, and to the Secretary of the Interior, the proper officers to determine the same, and said matter is yet pending on appeal, undecided, in the office of the Secretary of the Interior; that the defendant, at the time
28 of his settlement upon said land, built a house upon said land and made other valuable improvements, and has cultivated said land, and resided thereon continuously with his family since his settlement thereon.

That he has never entered into any agreement with any person whereby the title which he may acquire to said land shall be for the benefit of any person or persons other than himself.

That said land is agricultural land and not mineral land; that when he entered upon said land it was uncultivated, unimproved, unoccupied, and unenclosed; that the same had never been cultivated.

That the improvements upon said land are equal to the rents, issues and profits thereof during the time it has been occupied by him.

Offer No. 1.

The defendant, to further sustain the issues on his part, offered to show that the township plat of township 3 S., R. 13 W., S. B. M., was withdrawn from the U. S. land office at San Francisco, and for this purpose offered a duly certified copy of an order from U. S. Surveyor General Upson, with the endorsements thereon, which was in figures and words as follows:

U. S. SURVEYOR GENERAL'S OFFICE,
SAN FRANCISCO, CAL., *June* 26, 1868.

J. W. SHANKLIN, Esq.,
Register U. S. Land Office, San Francisco.

29 SIR: You are respectfully requested to return to this office the plat of township 2 S. and 3 S., ranges 13 and 14 W., San Bernardino Meridian, filed in your office April 22, 1868.

Very respectfully, your obedient servant,

L. UPSON,
U. S. Surveyor General.

(Endorsed:) Filed May 26, 1868, and maps returned to surveyor general's office.

To which offer of proof plaintiff objected, on the ground that the same was irrelevant and immaterial and incompetent.

The court then and there sustained the objection; to which ruling the defendant excepted in due form of law.

Offer No. 2.

Defendant then offered to prove the transmission of said plat to the U. S. land office at Los Angeles, by a letter of date November 15, 1871, directed to H. C. Austin, then register of said land office, signed by J. R. Hordenberger, then U. S. surveyor general for the State of California, transmitting said plat to said office.

To which plaintiff objected, on the same grounds to last offer.

The court then and there sustained said objection; to which ruling the defendant excepted in due form of law.

30 Offer No. 3.

The defendant then offered in evidence the patent of the Rancho Sausal Redondo, with map attached thereto, with endorsements thereon, for the purpose of showing the existence of the said grant and date of final survey.

Said patent was in usual form, and shows that said Rancho Sausal Redondo was finally confirmed to Antonio Y. Abila, was surveyed and separated from the adjoining public lands under instructions from U. S. surveyor general by Geo. Hansen, deputy U. S. surveyor general, in 1868, which survey was finally approved by the Commissioner of the General Land Office, March 22d, 1875, and patent issued same day. No part of the land in controversy is included within said patent.

Plaintiff interposed the same objections to this offer as was to first offer above.

The court then and there sustained the objection; to which ruling the defendant in due form of law excepted.

Offer No. 4.

Defendant then offered in evidence a certified copy of map of U. S. Deputy Thompson's survey of said Rancho Sausal Redondo, mdae in July, 1868, including the lands in controversy, with all the certificates and endorsements thereon, including the certificate of
31 approval thereof of Sherman Day, then U. S. surveyor general for the State of California, of date April 4th, 1869. Said offer was made to show that said land was claimed by the owner of said grant as a part thereof.

Plaintiff objected to the introduction of said map, upon the grounds set forth in objection to first offer.

The court then and there sustained said objection; to which ruling defendants excepted in due form of law.

Offer No. 5.

Defendant then offered in evidence the decision of the Secretary of the Interior of the United States of date October 31st, 1871, in regard to the survey of the Rancho Sausal Redondo, to show that the survey of said rancho made by Thompson, including said land, was not rejected until October, 1871, together with the order of the Commissioner of the General Land Office at Washington and opinion of the U. S. Attorney General thereto attached, dated October 23d, 1871.

Plaintiff objected, on the same grounds contained in objection to first offer of defendant, and upon the further ground that it appears upon its face to be the opinion of the Attorney General and Secretary upon questions of law.

32 The court then and there sustained said objection; to which the defendant duly excepted in proper form of law.

Offer No. 6.

Defendants then offered in evidence the protest of the grant claimants of said Rancho Sausal Redondo to the Hansen survey, which survey became the final survey of said rancho; said protest was dated May 23d, 1868. Said offer was made with the same intent as the last two offers of defendant.

Plaintiff objected to the evidence offered, upon the grounds that the same was irrelevant, immaterial, and incompetent, as it appears upon the face of said protest that it is the statement of an attorney only as to the facts therein contained, and there is no evidence offered to show that the same was the attorney of the parties he assumed to represent.

The court sustained the objection; to which ruling the defendant duly excepted.

Offer No. 7.

Defendant then offered in evidence the only description of the lands in question applied for, and affidavit endorsed thereon, ever filed by E. Woodruff, in the county recorder's office of Los Angeles county, California, required by the 29th sec. of act of April 27th, 1868, for the purpose of showing that the attempted descrip-
33 tion omitted to state whether the township was north or south, and whether the range was east or west.

To which plaintiff objected, on the ground that the same was irrelevant, imaterial, and incompetent.

The court sustained the objection, and defendant then and there duly excepted to said ruling.

Offer No. 8.

Defendant then offered in evidence the application of said F. Woodruff to purchase said land, of date March 6th, 1868, accepted April 20th, 1868, by the State local agent, purporting to have

been made in conformity with the said act of 1863, and applying for said land in lieu of the E. ½ of section 36, T. 8. S., R. 7 W., S. B. M., claimed to be within a private grant, to show that the application was not signed by said Woodruff, or by any person in his behalf, and the said application was not accompanied by the affidavit of three disinterested witnesses stating, among other things, that said applicant was a resident of the State, and that the lands were unoccupied by any person except the applicant, as required by said act of April 27th, 1863.

Also all of the endorsements upon said application.

Also the certificate of said Locating Agent Ransom, May 27th, 1868, of the location of said lands in lieu of the same lands described in the application.

34 Also the deed of said applicant attached to said application of date March 6th, 1868, said offer being made to show that said application was fraudulent and irregular, and to support the allegations in defendant's answer.

Plaintiff objected, on the ground that the same was irrelevant, immaterial, and incompetent; and upon the further ground, that the defendant herein claimed the land in controversy as a pre-emptor and under the laws of the United States, and held the same adverse to the State title, and, not being in privity thereto, could not in this proceeding inquire into or question any of the proceedings taken by the plaintiff herein, or his grantor, to purchase the said land of the State.

Which objection was by the court sustained; to which ruling the defendant excepted in due form of law.

Offer No. 9.

Defendant then offered in evidence the application of W. S. Rosecrans, of date August 25th, 1869, for the land in question, with all the endorsements thereon, which said application was made in lieu of same lands as those described in the application of E. Woodruff; also the certificate of purchase issued to said Rosecrans for said land, for the purpose of showing that it was a continuation of the same proceeding.

35 To which offer plaintiff interposed the same objection as last above made.

The court then and there sustained said objection; when defendant excepted in due form of law.

Offer No. 10.

The defendant then offered in evidence the certified copy of the patent map of the survey of the Rancho Santa Margarita y Los Flores, to show that the lands in lieu of which the lands in question were applied to purchase from the State, and in lieu of which said lands were listed to the State by the United States authorities, were included in that survey, and the endorsement upon the patent map

of the approval thereof made in 1875, for the purpose of showing that said lands were not known to have been lost to said State by reason of being included within said survey when the lands in question were applied to be purchased, or when said land was listed to said State.

Plaintiff objected to said evidence, on the ground that the same was irrelevant, immaterial, and incompetent; and upon the further grounds, that it appearing by the answer of defendant filed in this cause that said defendant entered upon said land in the year 1876,
36 after the same had been certified to the State of California by the General Government of the U. S., and after the State of California had sold said land and issued a patent therefor; and that said defendant claimed said land under the pre-emption laws of the U. S., and not otherwise, and that the officers of the Land Department could not receive his filing, is not such privity with the title of the U. S. or of the State of California, as to be allowed to question the proceedings taken whereby the land was listed to the State of California in the proceedings taken, whereby the State of California sold and conveyed said lands to grantor of plaintiff.

The court then and there sustained said objection; to which ruling defendant excepted in due form of law.

Offer No. 11.

The defendant then offered in evidence the list offered in evidence by plaintiff from the U. S. to the State of California, for the purpose of showing that the land in question was certified to the State of California in lieu of E. ½ sec. 36, T. 8 S., R. 7 W., S. B. M.

No objection was interposed, and the evidence was admitted.

Offer No. 12.

The defendant then offered in evidence a certificate of purchase for said land from the State of California to W. S. Rosecrans, of
37 date ——, 1872, to show that in satisfaction of the application of said Rosecrans the said certificate of purchase was issued.

Plaintiff objected, on the ground that the same was irrelevant, immaterial, and incompetent.

The court sustained the objection, and the evidence was excluded; to which ruling the defendant excepted in due form of law.

Offer No. 13.

The defendant then offered in evidence the patent heretofore offered by the plaintiff for the land in question from the State of California to said W. S. Rosecrans, of date ——, 1874, for the purpose of showing that said patent was issued in satisfaction of the application of said Rosecrans, made in ——, 1869, above offered.

No objection was made, and the same was received in evidence.

Offer No. 14.

Defendant then offered in evidence the selection of said lands in lieu of the same lands described in the application and certificate of location or selection; said selection was of date May 27th, 1868, and made by the State locating agent; also the acceptance of said selection May 27, 1868, by J. W. Shanklin, register of the U. S. land office, for the purpose of showing that the list last above offered was in satisfaction of said selection, and to sustain the allegation of the defendant's answer.

38 Plaintiff objected to said evidence, on the grounds stated in defendant's Offer No. 8.

The court sustained said objection, and defendant duly excepted.

Offer No. 15.

Defendant then offered to prove by David M. Main, a witness in court, that in March, 1868, at the request of W. S. Rosecrans or of persons in his employ, he went down upon the tract of land known as the Rosecrans tract, in Los Angeles county, in the immediate vicinity of the land in question, for the purpose of locating and purchasing lands from the State of California.

That witness carried fifteen or twenty other men who were solicited to go on like errand as witness—that is, to locate and purchase land.

That witness saw a great number of men going and coming from said tract who were solicited by said Rosecrans or his agent for the same purpose.

That witness saw surveyors in the field at work while on the land.

That after they had been upon the land they returned to Los Angeles and went to the office of one of the agents of Rosecrans, and there were paid money and made deeds of said land to Rosecrans, and also signed other papers in connection therewith.

41 That nothing further was done to procure title to said land by the applicants. No money was ever paid by them, and they had no further interest in said land.

To which offer plaintiff objected, on the ground that the same was irrelevant, immaterial, and incompetent; and also for the further grounds expressed in plaintiff's objection to Offer No. 8 of the defendant.

The court sustained the objection, and defendant then and there duly excepted to the ruling of the court in due form of law.

Defendant then offered to prove the same matter by witnesses in court, to wit, John Rhodes and John Summers.

39 Exhibit No. 1.

List No. 1 is in usual form, and purports to list the land claimed by the said several defendants to the State of California, and to which are attached the following certificates, to wit:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, 23*d November*, 1871.

It is hereby certified that the tracts described in the foregoing list are embraced in the original lists now on file in this office of land selected as indemnity for deficiencies in the townships named, which indemnity school selections are authorized in the above cited acts of Congress of March 3, 1853, February 26, 1859, and July 23, 1866.

It is further certified that the said tracts have been examined and compared with the township plats and tract books of this office, and that the indemnity is properly due to the townships for which selected, are found to be subject to selection and free from conflict, and it is therefore recommended that the list be approved, subject to any valid interfering rights which may have existed at the date of selection.

(Signed) WILLIS DRUMMOND,
Commissioner.

DEPARTMENT OF THE INTERIOR, 24*th November*, 1871.

40 The foregoing list is hereby approved, subject to any valid interfering rights which may have existed at the date of selection.

(Signed) C. DELANO,
Secretary.

GENERAL LAND OFFICE, 23*d November*, 1871.

The tracts embraced in the following lists have been critically examined, and are found to be free from conflict, and to enure to the State for the purposes indicated.

M. MOBLEY.
JAMES J. BARNES.

Specifications and Assignment of Errors.

Defendant here assigns and specifies the errors of law committed by said court, which were duly excepted to by said defendant, as follows:

1. The court erred in admitting the testimony of J. W. Haverstick, in reference to the entries in the tract book concerning the land in question, over the objection of defendant, for the reasons and upon the grounds stated in said objection.

2. The court erred in excluding the evidence tendered in Offer No. 1 of defendant for the purpose of showing the withdrawal of the township plats.

42 3. The court erred in excluding the evidence tendered in Offer No. 2, to show the transmittal of said plats to the U. S. land office.

4. The court erred in excluding the evidence tendered in Offer No. 3, to show the existence of the Rancho Sausal Redondo and date of final survey.

5. The court erred in excluding the evidence tendered in Offer No. 4, to show that the land in question was claimed as part of said grant when applied for, selected, and listed to the State.

6. The court erred in excluding the evidence tendered in Offer No. 5, to show that said land was not excluded from the said grant until October 31, 1871.

7. The court erred in excluding the evidence tendered in Offer No. 6.

8. The court erred in excluding the evidence tendered in Offer No. 7 of defendant.

9. The court erred in excluding the evidence tendered in Offer No. 8 of defendant.

10. The court erred in excluding the evidence tendered in Offer No. 9 ef defendant.

11. The court erred in excluding the evidence tendered in Offer No. 10 of defendant.

12. The court erred in excluding the evidence tendered in Offer No. 12 of defendant.

13. The court erred in excluding the evidence tendered in Offer No. 14 of defendant.

43 14. The court erred in excluding the evidence tendered in offer of proof No. 15 of defendant.

WILL D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendant.

Certified to be correct, and by me allowed and signed accordingly.

J. D. HINES,
Superior Judge, Presiding

(MINUTES OF THE COURT.)

Order Denying Motion for a New Trial, June 16, 1881.

(Title of Court and Cause.)

Statement on motion for new trial as to defendant, J. M. Trusler, allowed and signed. Motion for new trial submitted, and by the court denied. Appeal bond for rents and profits fixed at $200.

Notice of Appeal.

(Title of Court and Cause.)

You will please take notice that J. M. Trusler, one of the defendants in the above-entitled action, hereby appeals to the supreme court of the State from the judgment therein made and entered in the said superior court on the 14th day of May, 1881, in favor of the said plaintiff in said action and against said defendant,
44 and from the whole thereof; and also from the order of the court in said cause denying said defendant's motion for a new trial, made and entered in said court on the 16th day of June, 1881.

Dated this 25th day of June, 1881.

WILL D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendant

To the clerk of said superior court and J. D. Bicknell, attorneys for plaintiff.

Filed June 25, 1881.

A. W. POTTS, *Clerk.*
By GRIFFIN JOHNSON,
Deputy Clerk.

Title of Court and Cause.

Stipulation.

It is hereby stipulated in the above-entitled cause that the foregoing transcript on appeal contains a full, true, and correct copy of the following documents on file in the above-entitled cause, to wit: Complaint; separate answer of J. M. Trusler; findings and judgment as to defendant, Trusler; statement on motion for new trial; ordor denying motion for new trial and notice of appeal.

And it is further stipulated that a sufficient undertaking on appeal in due form, staying all further proceedings in said court
45 upon the judgment and order appealed from, has been given and properly filed within the time and in the manner prescribed by law.

Dated July 22, 1881.

JOHN D. BICKNELL,
Attorney for Plaintiff.
WILL D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendant.

Endorsed: Filed Aug. 1st, 1881. F. W. Gross, clerk, by John O. Wheeler, deputy.

Service accepted by copy, this 30th day of July, 1881.
JOHN D. BICKNELL,
Att'y for Respondent.

46 *Judgment.*

In the Supreme Court of the State of California. In Bank, June 29th, 1882.

M. J. O'CONNOR, Respondent,
vs.
DANIEL HAZARD *et al.*, Appellants. } No. 7965.

On appeal from the superior court in and for the county of Los Angeles.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by the court, Myrick, J., dissenting.

Whereupon it is adjudged and decreed by the court that the judgment of the superior court in and for the county of Los Angeles, in the above-entitled cause be, and the same is, hereby affirmed with costs.

47 *Opinion.*

In Bank. Filed June 29, 1882.

O'CONNOR *vs.* GOOD
and
O'CONNOR *vs.* HAZARD. } Nos. 7965 and 7966.

(The court, Myrick, J., dissenting)

The facts as they appear from the records of these cases are identical with those in the record of the case of O'Connor *vs.* Frasher *et al.*, decided January 4, 1881, and upon the authority of that case the judgments in these cases are affirmed.

48 *Bond.*

In the Supreme Court of [the] United States.

DANIEL HAZARD, W. W. TAYLOR, JAMES M. TRUSLER, SAMUEL ERWIN, WILLIAM BONEY, FRED. HOLLAND, W. BURLINGAME, and J. F. HAWK, Plaintiffs in Error,

vs.

M. J. O'CONNOR, Defendant in Error.

Know all men by these presents that we, Leman D. Reynold and Arzeno W. Reynolds, are held and firmly bound unto M. J. O'Connor, said defendant in error herein, in the sum of one thousand (1,000.00) dollars, lawful money of the United States of America, to be paid to said M. J. O'Connor, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these
49 presents. Sealed with our seals. Dated this 6th day of July, A. D. 1882.

Whereas the above-named Daniel Hazard, W. W. Taylor, James M. Trusler, Samuel Erwin, William Boney, Fred. Holland, W. Burlingame, and J. F. Hawk, plaintiffs in error herein, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the cause entitled M. J. O'Connor, plaintiff and respondent, against Daniel Hazard *et al.* (No. 7965), by the supreme court of the State of California:

Now, therefore, the condition of this obligation is such that if the above-named Daniel Hazard, W. W. Taylor, James M. Trusler, Samuel Erwin, William Boney, Fred. Holland, W. Burlingame, and J. F. Hawk shall prosecute their said writ of error to effect, and answer all rents, costs, and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

LEMAN D. REYNOLDS. [SEAL.]
ARZENO W. REYNOLDS. [SEAL.]

Signed, sealed, and delivered in presence of—
WILL D. GOULD.

50 UNITED STATES OF AMERICA, } ss:
State of California, }

Lamon D. Reynolds, of Los Angeles county, California, and Arzeno W. Reynolds, of San Diego county, California, being first duly sworn, each for himself, deposes and says: That he is a resident freeholder in said State of California, and is worth the sum of one thousand (1,000) dollars, exclusive of property exempt from execution, over and above all his just debts and liabilities.

LEMAN D. DEYNOLDS. [SEAL.]
ARZENO W. REYNOLDS. [SEAL.]

Subscribed and sworn to before me, this eighth day of July, A. D. 1882.

FRANK W. GROSS, *Clerk,*
By JOHN O. WHEELER, *Dep'ty.*

The amount of the bond in the within mentioned case is hereby fixed at one thousand (1,000) dollars.
Dated July 6th, 1882.

ROB'T F. MORRISON,
Chief Justice of California.

Approved by me.
R. F. MORRISON,
Chief Justice.

Endorsed: Filed July 8th, 1882. F. W. Gross, clerk, p. John O. Wheeler, deputy.

51 *Writ of Error.*

The President of the United States of America.

The President of the United States of America to the justices of the supreme court of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court before you between Daniel Hazard, W. W. Taylor, James M. Trusler, Samuel Erwin, William Boney, Fred. Holland, W. Burlingame, and J. F. Hawk, plaintiffs in error, and M. J. O'Connor, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause

further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 6th day of July, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] L. S. B. SAWYER,
Clerk of U. S. Circuit Court, District of California,
By J. F. O'BEIRNE,
Deputy Clerk.

The above writ of error is hereby allowed.
ROB'T F. MORRISON,
Chief Justice of California.

[Endorsed:] United States Supreme Court. Daniel Hazard *et al.*, plaintiffs in error, *vs.* M. J. O'Connor, defendant in error. Writ of error. Will D. Gould, att'y for pl'ff in error. Filed July 6, 1882. F. W. Gross, clerk, by J. B. Martin, deputy.

52 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To M. J. O'Connor, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, on the second Monday of October, A. D. 1882, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Daniel Hazard, W. W. Taylor, James M. Trusler, Samuel Erwin, William Boney, Fred. Holland, W. Burlingame, and J. F. Hawk are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert F. Morrison, chief justice of the supreme court of the State of California, this 6th day of July, A. D. 1882, and of the Independence of the United States the one hundred and seventh.

[SEAL.] ROB'T F. MORRISON,
Chief Justice of California.

Attest:
F. W. GROSS,
Clerk of Supreme C't of California,
By J. B. MARTIN, *Deputy.*

52½ Received copy of the within and foregoing citation this 8th day of July, A. D. 1882.

JOHN D. BICKNELL,
Attorney for Defendant in Error.

[Endorsed:] United States Supreme Court. Daniel Hazard *et al.*, plaintiffs in error, *vs.* M. J. O'Connor, defendant in error. Citation. Filed July 8th, 1882. F. W. Gross, cl'k, p. John S. Wheeler, d. cl'k.

53 *Clerk's Certificate.*

In the Supreme Court of the State of California.

DANIEL HAZARD, Plaintiff in Error,
vs.
M. J. O'CONNOR, Defendant in Error.

I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the foregoing fifty-two pages, numbered from one to fifty-two, both numbers inclusive, contain a full, true, and correct transcript of the proceedings in the cause above entitled, and that the same together constitute the return to the annexed writ.

Witness my hand and the seal of the said supreme court, this August 29th, A. D. 1882.

[SEAL.] FRANK W. GROSS, *Clerk*,
By C. HARLAN, *Deputy*.

Endorsed on cover: California sup. court. No. 313. Daniel Hazard, W. W. Taylor, James M. Trusler, Samuel Erwin, William Boney, Frederick Holland, W. Burlingame, and J. F. Hawk, plaintiffs in error, *vs.* M. J. O'Connor. Filed 7th October, 1882.